

E-132, 299/SA-88-996 ORDER DENYING RECONSIDERATION AND CLARIFYING
ORDER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application
of the City of Rochester to
Adjust its Service Area Boundary
with People's Cooperative Power
Association, Inc.

ISSUE DATE: November 24, 1992
DOCKET NO. E-132, 299/SA-88-996
ORDER DENYING RECONSIDERATION
AND CLARIFYING ORDER

PROCEDURAL HISTORY

I. Proceedings to Date

This case is a consolidation of several dockets involving service area boundary and compensation disputes between two neighboring utilities, People's Cooperative Power Association (People's or the co-op) and the City of Rochester. On August 7, 1992 the Commission issued its ORDER DETERMINING MOTION FOR PARTIAL SUMMARY DISPOSITION. In that Order the Commission affirmed the Administrative Law Judge's determination that no compensation was due People's for the City's acquisition of those portions of People's' service area annexed before April 24, 1984 on which there were no People's' customers or facilities on the date of annexation. The Commission found those claims barred by laches.

Both the City and the co-op filed petitions for reconsideration. The co-op opposed any application of the doctrine of laches. The City sought to extend the application of the doctrine to all annexations occurring before March 23, 1987. The Department of Public Service (the Department) filed comments supporting the Commission's Order. On September 11, 1992 the Commission granted both petitions, to toll the 20-day statutory deadline for acting on them and ensure adequate time for careful review.

On September 15, 1992 the Administrative Law Judge, the parties, and a Commission staff member held a telephone conference to schedule further proceedings in the ongoing contested case. They discovered that the parties were unable to stipulate on which areas were affected by the Commission's Order due to disagreement over the status of areas bordered or crossed by People's' feeder lines on the date of annexation. They disagreed on whether feeder lines were "facilities" within the meaning of the August 7

Order. They also discovered that the issue had not been addressed in any of the reconsideration filings made with the Commission. Since contested case proceedings could not progress efficiently until the issue had been resolved, the parties agreed it would be best to brief the issue to the Commission on an expedited basis.

On September 24, 1992 the Commission issued an Order establishing an expedited briefing schedule on the feeder line issue. Both utilities and the Department filed briefs in accordance with the schedule.

The petitions for reconsideration and the feeder line issue came before the Commission on November 5, 1992.

FINDINGS AND CONCLUSIONS

II. Petitions for Reconsideration

The petitions for reconsideration presented no new evidence or new arguments requiring further analysis or rehearing. Neither did the parties' analyses of the Commission's decision convince the Commission to rethink and change that decision. The Commission will therefore affirm its August 7 decision on reconsideration.

III. The Feeder Line Issue

The co-op argued that the laches Order should not bar compensation for any area with a feeder line running through it, alongside it, or within near proximity to it, for two reasons. 1. Feeder lines are facilities within the meaning of the 1970 agreement on which the laches decision is based. Therefore, the City would have had to purchase feeder lines within or beside annexed areas to comply with the compensation provisions of that agreement. 2. If an area had a feeder line alongside it or near it, the co-op was "providing electric service" within the meaning of the municipal acquisition statute, Minn. Stat. § 216B.44 (1990). That being the case, the co-op claimed the Commission needed stronger evidence than it accepted in the August 7 Order to apply the doctrine of laches. The Commission disagrees.

First, the Commission rejects the contention that feeder lines were invariably "facilities" the City had to purchase to exercise its rights under the 1970 agreement. The record shows that this interpretation is at odds with actual practice under the agreement.

For example, in 1982, when the City purchased service rights to specific areas within People's' service territory, People's did not request or receive payment for feeder lines running along the areas' borders. This was reasonable; People's continued to need these lines to serve other customers. Similarly, in at least some of the cases in which People's gave the City plat maps to help the City extend service within People's' territory, the areas at issue were bordered or crossed by People's' feeder lines. Finally, when People's and the City conducted joint construction projects to allow the City to serve new developments within People's' territory, the areas were necessarily bordered by People's' feeder lines.

In these cases, the feeder lines were integral parts of People's' distribution system, needed to provide service outside the area to which the City was extending service. They would not have been purchased by the City under any imaginable scenario. It is not true, then, that feeder lines in and around bare ground annexations were invariably the kind of "facilities" the 1970 agreement required the City to buy. In fact, more often than not, they were not.

The Commission also rejects People's' contention that the presence of People's' feeder lines in, beside, or near an area prevents the application of the doctrine of laches because the area is "receiving electric service" within the meaning of the municipal acquisition statute, Minn. Stat. § 216B.44 (1990). That definition is controlling only for purposes of determining whether a compensation determination is necessary. The co-op lost its right to a compensation determination through the operation of laches, as explained in the August 7 Order.

Finally, the City and the Department correctly point out that treating feeder lines as "facilities" within the meaning of the August 7 Order would put this proceeding in precisely the procedural posture the Order was designed to avoid. The August 7 Order found that arriving at accurate compensation figures for annexations occurring between 1975 and 1984 would be too difficult to attempt unless equitable concerns demanded it. Memories have faded; documents have been lost or destroyed; key witnesses are unavailable due to death or other causes. The Commission concluded it was more equitable to treat certain claims as barred by laches than to attempt to reconstruct the facts surrounding long-completed annexations and the exact configuration of each utility's system at the time such annexations occurred. The Commission continues to believe it is inadvisable to hold evidentiary hearings when the ability of those hearings to yield credible factual findings is in serious doubt.

The Commission did not address feeder lines in the August 7 Order because it had not occurred to the Commission or to any of the parties that these lines would become an issue. Having examined the issue, the Commission concludes that the term "facilities," as used in the August 7 Order, does not apply to any People's' feeder lines needed or being used to serve customers outside annexed areas on the date of annexation.

ORDER

1. The Commission affirms its August 7 ORDER DETERMINING MOTION FOR PARTIAL SUMMARY DISPOSITION on reconsideration.
2. The August 7 Order is hereby clarified as follows: the term "facilities" as used in the ordering paragraphs does not apply to any People's' feeder lines needed to serve or being used to serve customers outside annexed areas on the date of annexation.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)